

taxed as a part of the court costs. The attorneys' fees so awarded shall not exceed ten thousand dollars (\$10,000).

(b) When the presiding judge determines that an award of attorneys' fees is to be made under this statute, the judge shall issue a written order including findings of fact detailing the factual basis for the finding of an unwarranted refusal to negotiate or pay the claim, and setting forth the amount of the highest offer made 90 days or more before the commencement of trial, and the amount of damages recovered, as well as the factual basis and amount of any such attorneys' fees to be awarded."

SECTION 3.2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 38B.

"Trespasser Responsibility.

"§ 38B-1. Title.

This Chapter may be cited as the Trespasser Responsibility Act.

"§ 38B-2. General rule.

A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.

"§ 38B-3. Exceptions.

Notwithstanding G.S. 38B-2, a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situations:

- (1) Intentional harms. – A possessor may be subject to liability if the trespasser's bodily injury or death resulted from the possessor's willful or wanton conduct, or was intentionally caused by the possessor, except that a possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime.
- (2) Harms to trespassing children caused by artificial condition. – A possessor may be subject to liability for bodily injury or death to a child trespasser resulting from an artificial condition on the land if all of the following apply:
 - a. The possessor knew or had reason to know that children were likely to trespass at the location of the condition.
 - b. The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of serious bodily injury or death to such children.
 - c. The injured child did not discover the condition or realize the risk involved in the condition or in coming within the area made dangerous by it.
 - d. The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved.
 - e. The possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.
- (3) Position of peril. – A possessor may be subject to liability for physical injury or death to a trespasser if the possessor discovered the trespasser in a position of peril or helplessness on the property and failed to exercise ordinary care not to injure the trespasser.

"§ 38B-4. Definitions.

The following definitions shall apply in this Chapter:

- (1) Child trespasser. – A trespasser who is less than 14 years of age or who has the level of mental development found in a person less than 14 years of age.
- (2) Possessor. – A person in lawful possession of land, including an owner, lessee, or other occupant, or a person acting on behalf of such a lawful possessor of land.